IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No. 210 of 1999
DATE OF DECISION: 6.9.2007

The Commissioner of Income-tax, Jalandhar

…Appellant

Versus

M/s Avtar Singh & Co., Nakodar, District Jalandhar

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Vivek Sethi, Advocate,
for Mr. Sanjiv Bansal, Advocate,
for the appellant-revenue.

M.M. KUMAR, J.

The revenue has approached this Court by filing instant appeal under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act'), challenging order dated 16.7.1999, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity, 'the Tribunal'), in ITA No. 14(ASR)/1993, in respect of assessment year 1989-90 (A-3). The revenue has claimed that the following questions of law would arise for our determination:-

1. Whether on the facts and in the circumstances of the case, the ITAT was right in law in dismissing the appeal of the Revenue and upholding the deletion by the CIT (A) of the penalty imposed

under Section 271D of the Income-tax Act, 1961 on the ground that the default, if any, was merely that of technical nature for the year ending 31.03.1988?

2. Whether on the facts and in the circumstances of the case, the ITAT was right in law even in alternatively holding that the assessee had not acted deliberately in defiance of the provisions of Section 269SS of the Income-tax Act, 1961 or has acted in conscious disregard of its obligation, to follow the said provision for the year ending 31.03.1988?

After hearing learned counsel for the revenue, perusing the orders passed by the Assessing Officer, CIT (A) and the Tribunal we find that a finding of fact has been recorded by the Tribunal in para 8 of its order showing that the creditors got the drafts prepared and instead of depositing the same in the account of the assessee, erroneously deposited the same in the account of the Excise and Taxation Department. The licence fee was required to be paid by the assessee and this error has been considered as a technical default on the part of the assessee, which was considered by the Assessing Officer as violation of Section 269SS of the Act. The Tribunal opined that it was a fit case for cancellation of penalty under Section 271D of the Act for a mere technical default as the assessee had not acted deliberately in defiance of provisions of Section 269SS of the

Act and the order passed by the CIT (A) was held to be fully justified. The Tribunal has also drawn support from the judgment of Hon'ble the Supreme Court in the case of **Hindustan Steel Ltd. v. State of Orissa, (1972) 83 ITR 26**.

Having heard learned counsel we do not find that any question of law warranting admission of the appeal would arise. Therefore, there is no merit in the appeal and the same is accordingly dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

September 6, 2007
Pkapoor